

S.D.N.Y. – N.Y.C.
03-cr-1364
16-cv-4771
Kaplan, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14th day of October, two thousand twenty-two.

Present:

Pierre N. Leval,
Denny Chin,
Joseph F. Bianco,
Circuit Judges.

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: Oct 14 2022
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United States of America,

Appellee,

v.

21-1324

Otis Parkes,


Defendant-Appellant.

Appellant moves for the Court to terminate the previously imposed stay of this appeal, grant a certificate of appealability, summarily vacate the district court orders denying Appellant's 28 U.S.C. § 2255 motion, and remand for further proceedings. Appellee consents to the requested relief. Upon due consideration, it is hereby ORDERED that the stay is TERMINATED; the motion for a certificate of appealability is GRANTED on the issue of whether Appellant's 18 U.S.C. § 924(c) conviction remains supported by any valid crime-of-violence predicate; the district court's orders denying relief under 28 U.S.C. § 2255 (S.D.N.Y. 16-cv-4771, docs. 12 & 13; S.D.N.Y. 03-cr-1364, docs. 213 & 214) are VACATED in light of *United States v. Taylor*, 142 S. Ct. 2015 (2022); and the case is REMANDED for further proceedings. See 28 U.S.C. § 2253(c); see also *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); 28 U.S.C. § 2106; *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (discussing circumstances warranting summary vacatur and remand).

It is further ORDERED that the mandate shall issue forthwith. *See* Fed. R. App. P. 41(b). The district court should decide in the first instance whether the case law underlying Appellant's claim may be applied retroactively to cases on collateral review and whether Appellant's § 924(c) conviction is still supported by any valid crime-of-violence predicate.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe